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Supreme Court, U.S.
FILED

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In The

SUPREME COURT OF THE UNITED STATES

October Term 1997

FRANK HOWARD

Petitioner

vs.

STATE ADMINISTRATIVE BOARD OF ELECTION LAWS; BOARD OF SUPERVISORS OF ELECTIONS OF PRINCE GEORGE'S COUNTY; and PARRIS GLENDENING, in his official capacity as Governor of the State of Maryland,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

FRANK E. HOWARD, Esquire
Representing himself as Petitioner
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92 pp.

QUESTIONS PRESENTED

1. Whether the decision in *Albaugh v. Tawes*, 233 F. Supp. 576 (D. Md.), *aff'd*, 379 U.S. 27 (1964) should be given *stare decisis* effect in considering a right asserted on constitutional grounds and on statutory grounds by a District of Columbia resident to participate in congressional elections in the State of Maryland, based on his present residence in the District of Columbia.

2. Whether it is a denial of equal protection for Maryland state and county election authorities to deny a former registered voter in Maryland the right to participate in congressional elections in the State of Maryland because of his having moved into the District of Columbia while allowing other registered voters in the State of Maryland who have moved to other countries to continue to participate in all federal, state and local elections in Maryland, including Maryland congressional elections, even when such other registered voters no longer maintain addresses in the State of Maryland.

LIST OF PARTIES

The parties in this case are the following. Petitioner is a resident of the District of Columbia. Petitioner is a member of the bar of the United States Supreme Court and of other bars, including the bars of the federal courts below. Petitioner represented himself in the courts below and is representing himself in the present petition for a writ of certiorari.

Respondent State Administrative Board of Election Laws (hereinafter the Board) is an agency of the State of Maryland. The membership of the Board is appointed by the Governor. The responsibilities of the Board include exercising supervision over the conduct of elections in the State of Maryland and over local boards of supervisors of elections.

Respondent Parris Glendening is the Governor of the State of Maryland and is sued in his official capacity. As chief executive officer of the State of Maryland, Governor Glendening is responsible for administering the laws of the state and appointing various state officials, including the members of the State Administrative Board of Election Laws.

Respondent Board of Supervisors of Elections of Prince George's County is the local election board for all of Prince George's County. The original borders of Prince George's County included plaintiff's present place of residence in the District of Columbia. Additionally, the town of plaintiff's former residence, Mt. Rainier, Maryland, is in Prince George's County.

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OPINIONS BELOW

The decision of the United States Court of Appeals for the Fourth Circuit dated September 9, 1997 denying petitioner's appeal is not reported and is reprinted in the Appendix, at pages 1a-2a.

The decision of the United States District Court for the District of Maryland dated November 14, 1996 granting the motions to dismiss of the State Administrative Board of Election Laws, the Board of Supervisors of Elections of Prince George's County and Parris Glendening and the order of the District Court dated November 28, 1996 denying petitioner's motion for reconsideration are not reported and are reprinted in the Appendix at pages 3a-6a.

JURISDICTION

The United States Court of Appeals for the Fourth Circuit entered issued its decision denying petitioner's appeal on September 9, 1997. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Citations to the constitutional provisions and statutes involved in this petition are listed below. They are set out verbatim in the appendix at the pages listed.

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Delegate to House of Representatives from District of Columbia, & Delegate from District of Columbia; applicability of certain Federal laws, Pub. L. No. 91-405, Title II, §§ 202, 204(a), 84 Stat. 848, 852 (Sept. 22, 1970), codified at 8 U.S.C.§§ 25a, 25b (1994 ed.). . 17a

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A Further Supplement to the Act Concerning the Territory of Columbia and the City of Washington, 1793 Md. Laws, ch. 58 (December 28, 1793) 46a

STATEMENT OF THE CASE

A. Facts Giving Rise to this Case

Petitioner is an adult citizen of the United States of America and a resident of the District of Columbia, with residence at 728 Taylor Street, N.E., Washington, D.C. 20017. Petitioner is seeking the right to participate in congressional elections in the State of Maryland. Petitioner is not asserting any right to participate in state or local elections in the State of Maryland. Nor is petitioner asserting any right to participate in presidential or vice-presidential elections in the State of Maryland. Complaint, pars. 1, 20, 24.

The residence of petitioner is east of Rock Creek, which was the border between Montgomery County and Prince George's County at the time jurisdiction over the present territory of the District of Columbia was ceded by the State of Maryland. Therefore the residence of petitioner is in the area which was a part of Prince George's County at the time of the cession of jurisdiction to the federal government of territory for the District of Columbia. Complaint, pars. 15, 16.

Residents of other territory for which Maryland has ceded jurisdiction to the federal government are allowed full election rights in the State of Maryland, including the right to participate in congressional elections. Complaint, par. 19.

Prior to moving to the District of Columbia petitioner's last voting residence was in the town of Mt. Rainier, Maryland, which is located in Prince George's County. Complaint, par. 32.

Maryland election officials permit persons who move to foreign countries to continue to vote by absentee ballot in all state and federal elections in Maryland, including in Maryland congressional elections, even when such persons no longer maintain addresses in Maryland and even when they may live for years in such foreign countries. Complaint, par. 33.

Certain facts pertaining to the history of the District of Columbia are relevant to the instant action. The details of those facts with citations to the historical record are set out in section I. B. below. The conclusion of the analysis presented below is that the District of Columbia remains within the borders of Maryland despite the cession of legislative jurisdiction to the federal government pursuant to Article I, Section 8, clause 17 of the United States Constitution, and that certain limited residual constitutional and statutory rights remain for District of Columbia residents in matters which have not been supplanted by later congressional legislation or by constitutional amendment. One of those rights is the right to participate in congressional elections in the State of Maryland.

B. Efforts To Seek Administrative Relief

In late 1995 petitioner petitioned Maryland state election authorities for the right to participate in Maryland congressional elections, and supported his petition with a legal memorandum. In July 1996 that petition was denied by the Maryland State Administrative Board of Election Laws. A similar verbal request by petitioner to Prince George's County election officials was also denied by the director of the Prince George's county election board.

C. Proceedings in the U.S. District Court for the District of Maryland

On August 16, 1996 petitioner filed the present action in the District Court of Maryland seeking a declaration of his right to participate in congressional elections in the State of Maryland and requesting injunctive relief.

The basis for federal jurisdiction in the District Court is the following. This is a case for declaratory judgment and injunctive relief alleging a violation of rights arising under the Fourteenth Amendment to the United States Constitution and under the laws of the United States. The District Court has jurisdiction to issue declaratory judgments and ancillary relief under 28 U.S.C. §§ 2201, 2202. The District Court has jurisdiction over constitutional and federal statutory claims under 42 U.S.C. § 1983 and under 28 U.S.C. § 1343(a)(3). The jurisdiction of the District Court also is authorized under 28 U.S.C. § 1331.

Petitioner's first cause of action in his complaint is a constitutional equal protection claim under the Fourteenth Amendment, relying on *Evans v. Cornman*, 308 U.S. 419, 26 L. Ed. 2d 370, 90 S. Ct. 1752 (1970), and on other cases on the voting rights of residents of territory under federal jurisdiction.

Petitioner's second cause of action is a statutory claim under An Act Concerning the District of Columbia, ch. 15, 2 Stat. 103 (February 27, 1801), reprinted in D.C. Code, Vol. 1 (1981 ed., 1991 replacement volume), at 46. That act left in place all existing rights under Maryland law except rights supplanted by congressional action.

Petitioner's third cause of action, offered in the alternative, is a constitutional equal protection claim, based on petitioner's last prior voting residence in the State of Maryland, seeking rights in congressional elections equal to those afforded voting

residents of Maryland who move to addresses outside the United States.

In the proceedings before the District Court, in lieu of answers to petitioner's complaint respondents filed motions to dismiss. Petitioner filed an opposition to those motions to dismiss which raised all of the federal constitutional and statutory issues discussed in the instant petition for certiorari. While the motions to dismiss were pending, petitioner filed a motion for certification as a class action.

On November 14, 1996 the District Court granted respondents' motions to dismiss as to all causes of action, and made no explicit ruling on petitioner's motion for certification as a class action. The Court's memorandum opinion reads in its entirety as follows:

> Plaintiff, a resident of the District of Columbia, has brought this action seeking a declaration that he has the right to participate in congressional elections in the State of Maryland. Plaintiff's primary arguments are foreclosed by a 1964 decision of this court that was affirmed by the Supreme Court of the United States. *See Albaugh v. Tawes*, 233 F. Supp. 576 (D. Md.), *aff'd*, 379 U.S. 27 (1964).
>
> Plaintiff makes one argument that was not addressed in *Albaugh*. This argument is based upon his prior residence in the state of Maryland. He asserts that defendants are denying him equal protection of the law because they do not permit him to vote in Maryland congressional elections although they do permit voting by members of the military and U.S. citizens living overseas whose last address within the geographical boundaries of the United States was in the State of Maryland. Maryland permits such voting pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. §§ 1973ff - 1973ff-6, which requires it to do so. Compliance with that Act provides a reasonable basis for defendants to distinguish between persons covered by the Act and persons such as plaintiff who have chosen to

move to the District of Columbia where (under existing law) they are not permitted to vote in Maryland congressional elections.[1]

A separate order granting motions to dismiss filed by defendants is being entered herewith.

Date: November 14, 1997 /s/
J. Frederick Motz
United States District Judge

[1] Although I am dismissing plaintiff's claim summarily because established law is clear, plaintiff is to be commended for having written a memorandum of significant historical interest. Plaintiff is also to be commended for not having sought a preliminary injunction or other emergency relief in regard to the 1996 elections.

Howard v. State Administrative Board of Election Laws, *et al.*, Civil No. JFM-96-2558 (D. Md, Memorandum decision, November 14, 1996).

Following the November 14, 1996 decision of the District Court, petitioner filed a timely motion for reconsideration, which the District Court denied on November 28, 1996.

D. Appeal to the United States Court of Appeals for the Fourth Circuit

After the November 28, 1996 denial of petitioner's motion for reconsideration, petitioner then filed a timely appeal of the November 14, 1996 and November 28, 1996 decisions to the U.S. Court of Appeals for the Fourth Circuit. Petitioner later submitted an appeal brief which raised all of the federal constitutional and statutory issues discussed in the instant petition for certiorari. A brief submitted to the Court of Appeals by the Committee for the Capital City as *amicus curiae* also raised specific federal constitutional issues

discussed in the instant petition. Briefs of the defendants addressed some of the constitutional and statutory issues which had been raised by petitioner and by *amicus curiae*. On September 9, 1997 the U.S. Court of Appeals issued a *per curiam* decision denying the appeal of petitioner and adopting the reasoning of the U.S. District Court.

REASONS FOR GRANTING THE PETITION

I. THE U.S. COURT OF APPEALS HAS DECIDED AN IMPORTANT FEDERAL QUESTION ON DISTRICT OF COLUMBIA CONGRESSIONAL ELECTION RIGHTS IN A WAY WHICH CONFLICTS WITH THE HISTORICAL RECORD AND WITH RELEVANT DECISIONS OF THE U.S. SUPREME COURT

A. The Constitutional and Legal Assumptions of the Court of Appeals Were Not Well-Founded

The constitutional and legal assumptions underlying the denial of congressional election rights to District of Columbia residents for nearly 200 years were not well founded in the historical record existing at the time those congressional elections rights were first denied. Moreover, even if those assumptions originally had been well-founded, those constitutional and legal assumptions are no longer valid in the light of court decisions in recent decades, including decisions of the United States Supreme Court concerning congressional voting rights and concerning the exercise of federal jurisdiction over territory by virtue of Article I, Section 8, clause 17 of the United States Constitution.

B. The District of Columbia Remains within the Maryland State Borders

All of what is now the District of Columbia was formerly a part of the State of Maryland. The borders of the State of Maryland have their origins in the charter from King Charles

which was granted to the first Lord Baltimore in 1632. Portions of that original territory were later granted to other persons, and those portions are now in four different states: the entire state of Delaware, the Virginia portion of the DelMarVa peninsula, a southern strip of Pennsylvania, and the eastern portion of West Virginia. By the time of independence from Great Britain the colony of Maryland consisted of the present borders of the state of Maryland, including the territory which is now the District of Columbia. Elmer Green, *The Making of Maryland*, (Baltimore: E. & M. Green, 1934), pp. 51-56, 184-200, Pl.Ex. 16.[1]

The history of the ratification of the U.S. Constitution shows that the framers of the Constitution had no intention of depriving the residents of the proposed seat of government of their rights to participate in elections for federal offices. Major cities such as Philadelphia and New York vied to become the seat of government, as did many smaller towns, with no indication that the residents of those areas would become disenfranchised in the national legislature. *See generally* Kenneth R. Bowling, *The Creation of Washington, D.C.*, (Fairfax, Virginia: George Mason University Press, 1991).

During the official debates on the ratification of the proposed constitution, no mention was made of changing the boundaries of any state nor of permanently removing any territory from a state. To the contrary, the framers expected the participation of the residents of the seat of government in the national government. A discussion at the Constitutional Convention in July of 1787 shows that the participants' reasons against locating the seat of government in an existing capital of a state were precisely because the activities of the state legislature might give too much of a provincial color to the national deliberations. *Debates on the Adoption of the*

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[1]Citations to Pl.Ex. refer to the record in the case, to plaintiff's exhibits submitted to the United States District Court for the District of Maryland.

Federal Constitution, Vol. V, Jonathan Elliot, ed. (New York: Burt Franklin, 1888), July 26, 1787, p. 374. Pl.Ex. 13. Moreover, in the Federalist, Number 43, written after the convention in urging the people of the State of New York to ratify the proposed constitution, James Madison clearly implied the continued participation of the residents of the seat of government in federal elections:

> And as it is to be appropriated to this use with the consent of the State ceding it; as the State will no doubt provide in the compact for the rights, and the consent of the citizens inhabiting it; as the inhabitants will find sufficient inducements of interest to become willing parties to the cession; as they will have had their voice in the election of the Government which is to exercise authority over them; as a municipal legislature for local purposes, derived from their own suffrages, will of course be allowed them; and as the authority of the Legislature of the State, and of the inhabitants of the ceded part of it, to concur in the cession, will be derived from the whole people of the State, in their adoption of the Constitution, every imaginable objection seems to be obviated.

The Federalist, No. 43 [James Madison], Jacob E. Cooke, ed. (Middletown, Connecticut: Wesleyan University Press, 1961), p. 289. Pl.Ex. 20.

In a similar vein, Alexander Hamilton argued that persons residing at a great distance from the national seat of government could rely on persons living in and near the national capital to alert them about the activities of the national government:

> It ought also to be remembered, that the citizens who inhabit the country at and near the seat of government, will in all question that affect the general liberty and prosperity, have the same interest with those who are at a distance; and that they will stand ready to sound the alarm when necessary, and to point out the actors in any pernicious project.

Id., No. 84 [Alexander Hamilton], p. 583. Pl.Ex. 20. *See* F. Elwood Davis, Chairman, Citizens' Joint Committee on National Representation for the District of Columbia, *Statement on House Joint Resolution 529*, in *Hearings before the Committee on the Judiciary*, House of Representatives, Eighty Sixth Congress, Second Session, April 6 and 7, 1960 (Washington, D.C.: Government Printing Office, 1960), pp. 35-42. Pl.Ex 12.

Following the ratification of the Constitution, the District of Columbia was created in 1790 by an Act of Congress. The act provided that state laws within the District would not be affected by the congressional acceptance of territory, "until the time fixed for the removal of the government thereto, and until Congress shall otherwise by law provide." An Act For Establishing the Temporary and Permanent Seat of the Government of the United States, ch. 28 § 1, 1 Stat. 130 (July 16, 1790), reprinted in D.C. Code, Vol. 1 (1981 ed., 1991 replacement volume), at 41. That Act was amended in 1791 to allow the southern limits of the territory to include the town of Alexandria. An Act to Amend "An Act for Establishing the Temporary and Permanent Seat of the Government of the United States," ch. 17, 1 Stat 214 (March 3, 1791). During a ten-year period the legislatures of both Maryland and Virginia enacted a number of laws referring specifically to the territory of the District. W.B. Bryan, *The Beginnings of Government in the District*, in Records of the Columbia Historical Society, Vol. 6 (Washington: Columbia Historical Society, 1903), pp. 65-96, at 69. Pl.Ex. 8.

Jurisdiction over the territory for the ten mile square of the original District was ceded to the federal government by the States of Maryland and Virginia by means of several acts in the years 1788, 1789, 1791, 1792 & 1793. *See Van Ness v. The Mayor, Aldermen, and Board of Common Council of the City of Washington and the United States of America*, 29 U.S. 232, 277-78, 7 L. Ed. 843, 856-58 (1830). The grants by Maryland of legislative jurisdiction to the federal government

over the territory for the District of Columbia contained no language changing the borders of Maryland. The relevant acts merely ceded jurisdiction, reserving the rights of property holders under Maryland law.[2] At no time did the State of Maryland make an unrestricted cession of jurisdiction over its territory to the federal government. Even though the Maryland act of 1791 in its section 2 stated that the designated territory was "acknowledged to be forever ceded and relinquished to the Congress and Government of the United States," that same 1791 act went on in sections 3 through 13 to specify property inheritance rights, appraisal procedures, property recording procedures, builders liens, licenses for the building of wharves, fines for the violations of building regulations, and restrictions on the retail sale of distilled spirits in the territory.[3]

At the time of the cession of jurisdiction of the Maryland portion of the District's territory, the section east of Rock Creek was in Prince George's County, and the portion west of Rock Creek was in Montgomery County.[4]

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[2]An Act to Cede to Congress a District of Ten Miles Square in This State for the Seat of Government of the United States, 1788 Md. Laws ch 46 (December 23, 1788), reprinted in D.C. Code, Vol. 1 (1981 ed., 1991 replacement volume), at 33; An Act Concerning the Territory of Columbia and the City of Washington, 1791 Md. Laws, ch. 45 (December 19, 1791), reprinted in D.C. Code, Vol. 1 (1981 ed., 1991 replacement volume), at 35; A Supplement to the Act Entitled "An Act Concerning the Territory of Columbia and the City of Washington," 1792 Md. Laws, ch. 49 (December 23, 1792), reprinted in D.C. Code, Vol. 1 (1981 ed., 1991 replacement volume), at 40; A Further Supplement to the Act Concerning the Territory of Columbia and the City of Washington, 1793 Md. Laws, ch. 58 (December 28, 1793), reprinted in D.C. Code, Vol. 1 (1981 ed., 1991 replacement volume), at 40. Pl.Ex. 1.

[3]An Act Concerning the Territory of Columbia and the City of Washington, (December 19, 1791), *supra*, sections 2-13.

[4]Wilhelmus Bogart Bryan, *A History of the National Capital*, Vol. I (New York: MacMillan, 1914), pp. 45, 77-78. Pl.Ex. 9. See An Act for the division and regulating several counties within this province, and

From 1790 to 1800 residents of the District of Columbia continued to vote in elections in the states of Virginia and Maryland, with polling occurring in Alexandria and Georgetown for residents of those towns and at Blandensburg, Maryland, where polling included the voters from Washington City.[5]

In 1801 the U.S. Congress asserted full legislative power over the District. An Act Concerning the District of Columbia (February 27, 1801), *supra*. At the time the District had a population of 14,000 persons. The existing town governments of Georgetown and Alexandria were permitted to continue to function. W.B. Bryan, *The Beginnings of Government in the District*, *supra*, at 74, 93, Pl.Ex. 8.

In the 1801 act of Congress, the laws in the portions of the District which had been ceded from Maryland and Virginia were declared to be the laws of those two states "as they now exist" in each respective portion of the District.[6] In 1802

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constituting a county, by the name of Prince-George's county, within the same province, 1695 Md. Laws, Ch. XIII, in *The Laws of Maryland*, Vol I, William Kilty, ed., (Annapolis: Frederick Green, 1799), Pl.Ex. 2.

[5]*See* Constance McLaughlin Green, *Washington, Village and Capital*, 1800-1878, (Princeton, New Jersey: Princeton University Press, 1962), p. 23. Pl.Ex. 15. The National Intelligencer, (November 7, 1800), p. 3. Pl.Ex. 22; The National Intelligencer, (November 12, 1800), p. 3. Pl.Ex. 23; John Clagett Proctor, *Proctor's Washington and Environs*, ([Washington, D.C.]: John Proctor, 1949), p. 237. Pl.Ex. 18; Edwin Melvin Williams, "Congress Assumes Local Government" in *Washington, Past and Present*, John Clagett Proctor, ed., Chap. XIV, (New York: Lewis Historical Publishing Company, Inc.: 1930), pp 75-77. Pl.Ex. 25; W.B. Bryan, *The Beginnings of Government in the District*, *supra*, at 78, Pl.Ex. 8.

[6]An Act Concerning the District of Columbia (February 27, 1801), *supra*, § 1. *See* Justice Walter S. Cox, *Efforts to Obtain a Code of Laws for the District of Columbia*, in Records of the Columbia Historical Society, Vol. 3 (Washington: Columbia Historical Society, 1900), pp 115-35, at 115. Pl.Ex. 11.

Congress passed an act incorporating the City of Washington.[7]

No congressional statute has ever changed the borders of Maryland. The congressional act of 1801 made no reference to the borders of Maryland other than to continue in force the laws of the State of Maryland in the part of the District of Columbia that had been ceded by Maryland to the United States. An Act Concerning the District of Columbia (February 27, 1801), *supra*, § 1.

Although Congress had asserted its legislative jurisdiction over the District of Columbia by the 1801 act, residents in the Maryland portion of the District of Columbia continued to vote in Maryland congressional elections and presidential elections until around 1804, according to research reported in 1990 by then congressman Stan Parris of Virginia. Documentary evidence of such voting, however, may not be available. Washington Post, March 7, 1990, p. D1., Pl.Ex. 24.

The end of this practice appears to have coincided with the passage of an act in 1805 by the Maryland state legislature which consolidated Maryland elections acts into a single act, section two of which remodeled the districts for congressional elections and for elections of presidential and vice-presidential electors. The new electoral districts for federal elections made no explicit provision for the territory of the District of Columbia. An Act to reduce into one the several Acts of Assembly respecting Elections, and to regulate said Elections, 1805 Md. Laws ch. 97, §§ 2, 3, in *The Laws of Maryland From the End of the Year 1799*, William Kilty, Thomas Harris & John Watkins, eds., (Annapolis: J. Green, [1820]). Pl.Ex. 5.

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[7]An Act to Incorporate the Inhabitants of the City of Washington, in the District of Columbia, Ch. 53, 2 Stat. 195 (May 3, 1802), reprinted in D.C. Code, Vol. 1 (1981 ed., 1991 replacement volume), at 49.

In the years following the 1801 assertion of legislative authority by Congress over the District, Congress focused on issues of local government, not on federal suffrage for District of Columbia residents. Congress made repeated delegations of legislative authority over the District to other entities, including to municipal corporations and to a territorial form of government. These delegations at times allowed for some rights of District residents to vote in elections for local offices. W.B. Bryan, *The Beginnings of Government in the District*, *supra*, at 69, 93, Pl.Ex. 8.

The territory which had been ceded by Virginia had been designated as the county of Alexandria within the District of Columbia, and included the town of Alexandria. In 1846 the county of Alexandria was retroceded by the U.S. Congress to the state of Virginia. See Justice Walter S.Cox, *Efforts to Obtain a Code of Laws for the District of Columbia*, *supra*, at 123, Pl.Ex. 11.

After the 1846 retrocession of the land south of the Potomac river to the state of Virginia, the laws of Virginia no longer had any applicability to the District. The laws of Maryland which had existed in 1801 continued in force in the remaining portion of the District, except for laws for the District which had been passed by the Congress since that date. Justice Walter S. Cox, *Efforts to Obtain a Code of Laws for the District of Columbia*, *supra*, at 123, 128, Pl.Ex. 11. The common law of Maryland still applies in District of Columbia Courts for Maryland cases decided prior to 1801. *U.S. v. Jackson*, 528 A.2d 1211, 1215 (D.C. App. 1987).

Congress effected a partial remedy to the lack of D.C. election rights when it proposed the Twenty-Third Amendment to the U.S. Constitution, which was ratified in 1961, granting District of Columbia residents the right to participate in presidential and vice-presidential elections, by choosing electors in the same manner as if the District of Columbia were a state. Constitution of the United States, Articles of

Amendment, Article XXIII. At that time the Supreme Court had not yet ruled on the election rights of residents of military reservations and other federal reservations, in the cases which are discussed in Section I. C. below. *See Carrington v. Rash*, 380 U.S. 89, 13, L. Ed. 2d 675, 85 S. Ct. 775 (1965); *Evans v. Comman*, 308 U.S. 419, 26 L. Ed. 2d 370, 990 S. Ct. 1752 (1970). Perhaps Congress would have taken a different approach to the problem of District of Columbia election rights if it had had the benefit of the jurisdictional analysis in those Supreme Court cases. Nonetheless, the Twenty-Third Amendment is now a part of the Constitution. Therefore for purposes of elections for electors for president and vice-president, the District of Columbia may not be considered as a part of the State of Maryland. But the residual rights of District of Columbia residents to participate in Maryland congressional elections should still be recognized, even though those rights have long been denied.

Congress in effect has recognized that the District of Columbia remains within the borders of Maryland, since Congressional proposals for relinquishing federal jurisdiction over part or all of the District of Columbia have always involved retroceding jurisdiction back to the State of Maryland. Any such proposal, however, would probably require the repeal of the Twenty-third Amendment to the U.S. Constitution, since that Amendment contemplated a sizable population in the District of Columbia electing three electors for president and vice-president. *See* Robert F. Kennedy, Attorney General, *Constitutionality of Retroceding the District of Columbia to Maryland*, in *Hearings before the Subcommittee on the District of Columbia*, House of Representatives, Eighty-Eighth Congress, First Session, November 18, 19, and 20, 1963 and February 24, 1964 (Washington, D.C.: U.S. Government Printing Office, 1964), pp. 341-52. Pl.Ex. 17.

In 1970 Congress granted the District of Columbia a non-voting delegate to the House of Representatives, but made no

provision for voting representation in either the House of Representatives or the Senate. Congress therefore failed to correct the denial of constitutional congressional election rights for District of Columbia residents. *See* Pub. L. No. 91-405, Title II, §§ 202, 204(a), 84 Stat. 848, 852 (Sept. 22, 1970), codified at 2 U.S.C. §§ 25a, 25b.

The current delegation of limited legislative authority to the District of Columbia government was enacted by the U.S. Congress in 1974, in legislation which is known as District of Columbia Home Rule. All legislation enacted under Home Rule remains subject to congressional approval. District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. No. 93-198, § 102, 87 Stat 774 (Dec. 24, 1973), reprinted in D.C. Code, Vol. 1 (1981 ed., 1991 replacement volume), pp. 173ff.

C. The Congressional Election Claims of the Petitioner Satisfy the Requirements of the Qualifications Clauses of the United States Constitution

The District of Columbia is not the only territory over which jurisdiction has been ceded to the federal government by the State of Maryland. Jurisdiction has been ceded to the federal government for more than 230 square miles of Maryland territory, of which the District of Columbia makes up only 61 square miles, only about one fourth the total. The largest federal reservation in Maryland is the Aberdeen Proving Ground, with 113.3 square miles. Other sizable federal reservations in Maryland include Ft. George Meade, 9.4 square miles, the Patuxent Research Refuge, 20 square miles, the Beltsville Agricultural Research Center, 10.3 square miles, and the C&O Canal national park, about 20 square miles. These largest federal reservations in Maryland make up only about 2.4% of the total territory of Maryland, which exceeds 9,770 square miles. *See Rand McNally Commercial Atlas & Marketing Guide* (Rand McNally & Company, 1996),

pp. 290, 336; Federal Reservation Fact Sheets: Aberdeen Proving Ground (August 15, 1996); Beltsville Agricultural Research Center (1996 Report, p. 13); Fort Meade (1996); Patuxent Research Refuge (1996). Pl.Ex 14.

Congressional authority over federal reservations derives from the same clause in the U.S. Constitution as does congressional authority over the District of Columbia, namely United States Constitution in Article I, Section 8, clause 17. That clause gives the Congress the power

> To exercise exclusive Legislation in all Cases whatsoever over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings . . .

U.S. Constitution, Article I, Section 8, clause 17.

A series of court decisions in the 1950s and 1960s ruled that residents of military reservations may constitutionally vote in state elections, even though jurisdiction over the territory for those reservations has been ceded from the states to the federal government. See *Carrington v. Rash*, 380 U.S. 89, 13 L. Ed. 2d 675, 85 S. Ct 775 (1965); *Rothfels v.Southworth*, 11 Utah 2d 169, 356 P.2d 612 (1960); *Adams v. Londeree*, 139 W. Va. 748, 83 S.E. 2d 127 (1954); *Arapajolu v. McMenamin*, 113 Cal. App.2d 824, 249 P.2d 318 (1952). Also, residents of Indian reservations may constitutionally vote in state elections, even if the state exercises no jurisdiction over the territory of the Indian reservation. See *Goodluck v. Apache County*, 417 F. Supp. 13 (D. Arizona, 1975).

The voting rights of persons residing on federal reservations in Maryland were in dispute for a time after a decision of the Maryland Court of Appeals prohibiting residents on the

federal enclave at National Institutes of Health (NIH) in Bethesda, Maryland from voting in Maryland elections. *Royer v. Board of Elections Supervisors*, 231 Md. 561, 191 A.2d 446 (1963). Jurisdiction over the territory for NIH had been ceded to the federal government by the State of Maryland in 1953. The NIH complex contained some residential buildings to allow scientists and doctors to live close to their place of work. *Evans*, *supra*, 398 U.S. at 420, 26 L. Ed.2d at 373. In *Royer* the Maryland Court of Appeals held that a resident of a federal reservation was not a "resident of the State" as required by Article 1, Section 1 of the Maryland Constitution, which governs voter eligibility.

The *Royer* decision, however, was ruled to be contrary to the United States Constitution in the 1970 United States Supreme Court decision cited above, *Evans v. Cornman*, 308 U.S. 419, 26 L.Ed.2d 370, 90 S.Ct 1752 (1970). The Supreme Court in *Evans* reaffirmed its earlier rejection of a "fiction of a state within a state." *Evans*, *supra*, 308 U.S. at 421, 26 L. Ed. 2d at 374, *quoting Howard v. Commissioners of Louisville*, 344 U.S. 624, 627, 97 L. Ed 617, 620, 73 S. Ct. 465 (1953). Therefore, under *Evans*, residents of federal reservations are not outside the boundaries of the states which ceded legislative jurisdiction to the federal government. A U.S. Court of Appeals also has held that for a state to relinquish political control over an area does not imply relinquishing the state's geographical boundaries. *First Hardin National Bank v. Fort Knox National Bank*, 361 F.2d 276, 279 (6th Cir. 1966).

District of Columbia residents do not vote in any elections for the Maryland state legislature, but that fact would not render them ineligible to serve as electors for Maryland congressional offices. The United States Constitution, Article I, Section 2 states that electors for the House of Representatives, that is, voters in such elections, "shall have the qualifications requisite for electors of the most numerous branch of the state legislature." *Constitution of the United*

States, Article I, Section 2, Clause 2. The relevant language in the Seventeenth Amendment of the Constitution, which provides for the direct election of United States Senators, is identical to that in Article I, Section 2, Clause 2.

The explicit language used in Article I, Section 2 and in the Seventeenth Amendment speaks only of qualifications and does not require the electors for congressional elections to consist only of the electors for the most numerous branch of the state legislature.

The Supreme Court has held that the Qualifications Clauses of the Constitution, in Art I, sec. 2, cl. 1, and the Seventeenth Amendment do not require "absolute symmetry" of qualifications to vote in elections for Congress and for the lower house of the state legislature. *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 299, 93 L. Ed. 2d 514, 533, 107 S. Ct. 544 (1986). The court held that the Qualifications Clauses were intended to assure that state voters not be disqualified from participating in federal elections.

> The fundamental purpose of the Qualifications Clauses contained in Article I, sec. 2 and the Seventeenth Amendment is satisfied if all those qualified to participate in the election of members of the more numerous branch of the state legislature are also qualified to participate in the election of Senators and Members of the House of Representatives.

Id., 479 U.S., at 299, 93 L. Ed. 2d at 532-33. The court further noted that in its earlier consideration of the Voting Rights Amendments of 1970 five members of the court had agreed that the amendments "could constitutionally establish a minimum age of 18 for voters in federal elections," while at the same time a majority of the Court concluded "that Congress was without power to set such a minimum age in state and local elections." *Id.*, 479 U.S., at 299, 93 L. Ed. 2d at 533, *citing Oregon v. Mitchell*, 400 U.S. 112, 117-18, 27 L. Ed. 2d 272, 91 S. Ct. 260 (1970).

Congress has also passed legislation specifying voter registration procedures which states must follow for federal elections, which may differ from the voter registration procedures the states follow for state elections. That act also declared the right to vote to be a fundamental right. National Voter Registration, 42 U.S.C. §§ 1973gg - 1973gg-10 (1994 ed.)

The right to participate in congressional elections has received special attention from the federal courts, since the right of the people to elect members of congress has its origin in the U.S. Constitution. The Supreme court has held that "[i]t is not true . . . that electors for members of Congress owe their right to vote to the state law in any sense which makes the exercise of the right to depend exclusively on the law of the state." *Ex Parte Yarbrough*, 110 U.S. 651, 28 L. Ed. 274, 4 S. Ct. 152, 158 (1884).[8]

Moreover, under the Constitution the Congress has specific authority over congressional elections. Article I, Section 4 of the Constitution grants the state legislatures the authority to prescribe the "Times, Places and Manner of holding elections for Senators and Representatives," but it further provides that "the Congress may at any time by law make or alter such Regulations, except as to the Places of chusing Senators." *Constitution of the United States*, Article I, Section 4.

District of Columbia residents had the right to participate in congressional elections of Maryland and Virginia as of the effective date of the 1801 act of the U.S. Congress, and that

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[8]*Cf. Shaw v. Hunt*, 517 U.S. __, 135 L. Ed. 2d 207, 116 S. Ct. 1894 (1996); *Bush v. Vera*, 517 U.S. __, 135 L. Ed. 2d 248, 116 S. Ct 1941 (1996); *Miller v. Johnson*, 515 U.S. 900 , 132 L. Ed. 2d 762, 115 S. Ct. 2475 (1995); *Wesberry v. Sanders*, 376 U.S. 1, 11 L. Ed. 2d 481, 84 S. Ct. 526 (1964); *Gray v. Sanders*, 372 U.S. 368, 380, 9 L. Ed. 2d 821, 83 S. Ct. 801, 808; *Swafford v. Templeton*, 185 U.S. 487, 46 L. Ed. 1005, 22 S. Ct. 788 (1902); *Wiley v. Sinkler*, 179 U.S. 58, 45 L. Ed. 84, 21 S. Ct. 17, 20 (1900).

right was therefore included in the blanket provision of that statute specifically leaving in force the laws of Maryland and Virginia then in effect in their respective territories of the District. This effect of the 1801 act to protect the existing rights of District of Columbia residents to participate in congressional elections would therefore be within the special authority of the U.S. Congress over congressional elections as set forth in Article I, Section 4 of the Constitution. *See* An Act Concerning the District of Columbia (February 27, 1801), *supra*.

D. Albaugh v. Tawes Should Not Have Been Given Stare Decisis Effect

In the proceedings below in the instant case, the decision of the District Court for the District of Maryland relied on the case of *Albaugh v. Tawes*, 233 F. Supp. 576 (D. Md.), *aff'd*, 379 U.S. 27, reasoning which was adopted by the United States Court of Appeals for the Fourth Circuit. However, for several reasons *Albaugh v. Tawes* should not have been given *stare decisis* effect.

The case of *Albaugh v. Tawes* involved an attempt by a losing Republican primary candidate for the U.S. Senate to set aside the results of a Republican Senate primary election in Maryland on the grounds that District of Columbia residents should have been allowed to vote in that election.

The *Albaugh* case arose three years after the 1961 ratification of the 23rd Amendment to the U.S. Constitution, the amendment which granted District of Columbia residents the right to vote in presidential elections. The case was brought a few months prior to the 1964 general election, which was the first presidential election in over 160 years in which District of Columbia residents would again be allowed to vote.

The plaintiff Mr. William Albaugh had been a losing candidate in the Maryland Republican Senate primary election. He had obtained only 7.2% of the vote in that primary election, placing third behind the incumbent Senator J. Glenn Beall who won with 59.8%, and behind James P. Gleason who received 30.9% of the vote. Congressional Quarterly, *Guide to U.S. Elections*, Third Edition (Washington, D.C.: Congressional Quarterly, Inc., 1994), p. 874, Pl.Ex. 9. Mr. Albaugh then sued to have the primary election results set aside on the ground that he had been harmed by the fact that District of Columbia residents had not been allowed to vote in the Maryland Republican Senate primary election.

The decision of the three-judge District Court in the case states that earlier similar court efforts by Mr. Albaugh had been dismissed for lack of standing. Nonetheless in response to Mr. Albaugh's latest effort and in an apparent effort to rid itself of any such future lawsuits, the court reached the merits of the case without resolving the issue of Mr. Albaugh's standing. On the merits the court ruled that District of Columbia residents could not vote in Maryland elections for the U.S. Senate. *Albaugh v. Tawes*, *supra*, at 577.

After receiving the adverse decision of the U.S. District Court Mr. Albaugh took his direct appeal to the Supreme Court, which affirmed the District Court's decision in a *per curium* memorandum decision dated November 9, 1964. The date of that decision was the Monday following the 1964 general election. See *Albaugh v. Tawes*, 379 U.S. 27 (1964).

In affirming the District Court's decision, the Supreme Court did not adopt the reasoning of the three-judge District Court, and therefore its memorandum affirmance of the District Court's decision must be seen only as affirming the result of that decision, while remaining silent as to the Supreme Court's views on the reasoning of that decision. In fact, any one of several other grounds could easily have been the reason for the Supreme Court's affirmance of the District

Court's dismissal in *Albaugh*, including the inappropriateness of a court setting aside the results of a Maryland Republican Senatorial primary election at a time several months after that primary election, by which time the general election had already occurred.

The political context of *Albaugh v. Tawes* indicates that the plaintiff, as a member of the Republican party, had a political interest which militated more for his losing the case than for his winning it. This fact alone would have been sufficient for the Supreme Court to have affirmed the dismissal on standing grounds.[9] Whatever were the personal reasons of Mr. Albaugh for filing his repeated cases over D.C. election rights, his legal interest in the 1964 reported decision was as a person seeking to become the Republican candidate for the U.S. Senate. In that capacity, his political chances of becoming a U.S. Senator would have been reduced had he achieved the result he purportedly was seeking in his lawsuit, since the District of Columbia was overwhelmingly Democratic in 1964 and has remained so ever since. Therefore Mr. Albaugh had suffered no harm by the exclusion of District of Columbia voters from Maryland elections for the U.S. Senate.

The participation of District of Columbia voters almost certainly would not have changed the outcome of the 1964 Maryland general election for the U.S. Senate, since even without the participation of District of Columbia voters the Democratic challenger Joseph Tydings beat the incumbent Republican J. Glean Beall. The Democratic margin of victory was 276,256 votes in that Senate contest. Congressional Quarterly, *Guide to U.S. Elections*, Third Edition, *supra*, p. 827. Pl.Ex. 10.

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[9]*See U.S. v. Hays*, 515 U.S. 737, 132 L. Ed. 2d 635, 115 S. Ct. 2431 (1995), *Warth v. Seldin*, 422 U.S. 490, 45 L. Ed. 2d 343, 95 S. Ct. 2197 (1975), *Baker v. Carr*, 369 U.S. 186, 7 L. Ed. 2d 663, 82 S. Ct. 691 (1962)

However, in 1968 and 1970 the Maryland general elections for the U.S. Senate were won by the Republican candidates, with narrow Republican margins of victory of 98,526 votes in 1968 and 24,518 votes in 1970. *Id.* During this same period District of Columbia voters were consistently voting heavily Democratic in presidential elections, by margins of 140,995 in 1964, 108,554 in 1968, and 92,401 in 1972, with Democratic percentages of 85.5 %, 81.8%, and 78.1% in those respective years. Richard M. Scammon & Alice V. McGillivray, *America Votes*, Vol. 21, (Washington, D.C.: Congressional Quarterly, 1995), p. 494, Pl.Ex. 19. The participation of Democrat voters who were residents of the District of Columbia might easily have changed the results of those two Maryland general elections for U.S. Senate in 1968 and 1970.

Beyond these political considerations, the reasoning in the *Albaugh* decision provides further grounds not for not giving the decision *stare decisis* effect. The three-judge District Court cited for case authority only one early Supreme Court case, *Reily v. Lamar*, 6 U.S. (2 Cranch) 344, 2 L. Ed. 300 (1805), a case which dealt with the transfer of jurisdiction in creditors matters from the Maryland courts to the recently-established courts of the District of Columbia. *Reily* addressed none of the constitutional claims raised in the present action. Furthermore, by the time of the *Albaugh* decision the doctrine of federal jurisdiction formulated in *Reily* was no longer good law.

The jurisdictional doctrine which was established by *Reily* had been repudiated by the United States Supreme Court eleven years prior to the *Albaugh* decision in *Howard v. Commissioners of Louisville*, *supra*, 344 U.S. at 626-27, 97 L. Ed. at 620, 73 S. Ct. at 467 (1953). Moreover, the specific implications for election rights of *Commissioners of Louisville* were confirmed by the Supreme Court six years after the *Albaugh* decision in *Evans v. Cornman*, 308 U.S. 419, 26 L. Ed. 2d. 370, 90 S. Ct. 1752 (1970), which rejected the type

of reasoning employed by the three-judge district court in *Albaugh*.

Another reason why *Albaugh v. Tawes* should not receive *stare decisis* effect in the instant case is because many of the issues in the instant case were not discussed in *Albaugh v. Tawes*. The plaintiff in *Albaugh* was a non-lawyer who made no detailed constitutional or statutory arguments in support of his claim. Under applicable decisions on *stare decisis*, a case should not be a binding precedent on issues which were neither raised nor discussed in the case. *KVOS v. Associated Press*, 299 U.S. 269, 279, 81 L. Ed. 183, 188, 57 S. Ct. 197 (1936); *Webster v. Fall*, 266 U.S. 507, 511, 69 L. Ed. 411, 412, 45 S. Ct. 148 (1924); *Carroll v.Carroll*, 57 U.S. (16 How.) 275, 286, 14 L. Ed. 936, 941 (1853).

Even if *Albaugh v. Tawes* were deemed to be a ruling on the constitutional issues raised in the instant case, erroneous rulings on constitutional issues are always appropriate for being overruled in later cases. See *Brown v. Board of Education*, 347 U.S. 483, 98 L. Ed. 873, 74 S. Ct 686, (1954)(rejecting the "separate but equal" doctrine of *Plessy v. Ferguson*, 163 U.S. 537, 41 L. Ed. 256, 16 S. Ct. 1138 (1896)); *West Coast Hotel v. Parrish*, 300 U.S. 379, 81 L. Ed. 703, 57 S.Ct. 578 (1937)(overruling *Adkins v. Children's Hospital*, 261 U.S. 525, 67 L. Ed. 785, 43 S. Ct. 394, (1923), in upholding the District of Columbia's minimum wage law).

In *Payne v. Tennessee*, 501 U.S. 808, 828, 115 L. Ed. 2d 720, 111 S. Ct. 2597, 2609 (1991) the Supreme Court stated,

> *Stare decisis* is not an inexorable command; rather it "is a principle of policy and not a mechanical formula of adherence to the latest decision." *Helvering v. Hallock*, 309 U.S. 106, 119, 84 L. Ed. 604, 60 S. Ct. 444, 451 (1940). This is particularly true in constitutional cases, because in

such cases "correction through legislative action is practically impossible."

Id., *quoting Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 407, 76 L. Ed. 815, 52 S. Ct 443, 447 (1932)(Brandeis, J., dissenting).

E. The Court of Appeals Should Have Considered the Equal Protection and Statutory Arguments Offered by Petitioner.

In the proceedings below, petitioner offered detailed arguments in support of each of his three causes of action. The Court of Appeals should have reached those arguments and should have ruled in petitioner's favor on each of them. Concerning petitioner's first cause of action, based solely on his present residence in the District of Columbia, the Fourteenth Amendment of the U.S. Constitution requires granting petitioner the right to participate in Maryland congressional elections, though not in Maryland state or local elections, nor in elections in Maryland for electors for president and vice-president. *Evans v. Cornman*, *supra*. Concerning petitioner's second cause of action, petitioner has a statutory right to participate in Maryland congressional elections based on the effect of section 1 of An Act Concerning the District of Columbia (February 27, 1801), *supra*, in which the laws in the Maryland and Virginia portions of the District were declared to be the laws of those two states "as they now exist" in each respective portion of the District. At that time residents of the Maryland portion of the District were allowed to participate in Maryland congressional elections, and that right has never been supplanted by later congressional action or constitutional amendment.

On petitioner's third cause of action, based on his former residence and voting registration in Maryland, the Fourteenth Amendment requires that petitioner be allowed the same right to participate in Maryland congressional elections as is

allowed to other former residents of Maryland who have moved to other countries. The District Court applied the wrong standard when it rejected petitioner's argument on the grounds that Maryland's compliance with the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. §§ 1973ff - 1973ff-6 "provides a reasonable basis" for defendants to make the distinctions which are challenged in the instant case. Memorandum Opinion, November 14, 1996. The instant case asserts a denial of fundamental constitutional rights. Therefore the proper standard requires a finding that the actions of defendants are necessary to promote a "compelling state interest." *Dunn v. Blumstein*, 405 U.S. 330, 31 L. Ed. 2d 274, 92 S. Ct. 995 (1972); *Kramer v. Union Free School District*, 395 U.S. 621, 23 L. Ed. 2d 583, 89 S. Ct. 1886 (1969); *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993)

II. THE QUESTION OF DISTRICT OF COLUMBIA CONGRESSIONAL ELECTION RIGHTS IS IMPORTANT

The federal question at issue in this petition is important because fundamental political rights of the residents of the District of Columbia are being unconstitutionally denied. This denial affects District of Columbia residents in all areas of life covered by congressional action. For example, male residents of the District of Columbia are subject to military conscription, yet they have had no voting representation in the Congress which can send them to war. In World War II over 107,000 residents of the District of Columbia served in the U.S. military, 1,171 of whom were killed in action and another 2,404 of whom suffered non fatal wounds. United States Department of Veterans Affairs, Analysis and Statistics Service, Information Sheets dated Feb. 28, 1997.

Moreover, the present state of local government in the District of Columbia, including failures in basic government services and a high rate of crime, affects not only the residents

of the District of Columbia, but also the tens of thousands of federal government employees who come to work in the District and the hundreds of thousands of tourists who annually visit their nation's capital.

Furthermore, the lack of congressional election rights by the residents of our nation's capital is an international disgrace which lessens our nation's claim to be a leader of democracy throughout the world. The United States is the most powerful democracy in the world. Yet in no other democracy in the world are the residents of a country's capital city denied voting representation in their national legislature.

A constitutional and legal stalemate has developed over the past nearly two hundred years concerning full voting congressional representation for the residents of the District of Columbia. Different governmental entities with the potential authority to correct the situation have refused to do so, sometimes asserting that the power to change the situation lies in some other institution or entity. *See, e.g.*, Robert F. Kennedy, Attorney General, *Constitutionality of Retroceding the District of Columbia to Maryland, supra.*

Given the failure of other governmental institutions to correct the lack of voting congressional representation for District of Columbia residents for a period now approaching two hundred years, the United States Supreme Court, as the ultimate protector of the constitutional rights of all the citizens of the United States, should grant the present petition for certiorari.

The relief sought by petitioner respects the unique nature of the District of Columbia. In addition to continuing to exercise election rights under D.C. home rule legislation and in elections for presidential and vice-presidential electors under the Twenty-Third Amendment, petitioner and other District of Columbia residents would participate in elections for U.S. Senators for Maryland and for one or more U.S.

Representatives in the Maryland delegation. Future congressional redistricting would include the territory of the District of Columbia in one or more Maryland congressional districts.

As shown above, the relief sought by petitioner fully complies with all federal constitutional and legal requirements for participation in congressional elections in the State of Maryland.

CONCLUSION

The Supreme Court should grant the petition for certiorari and set the case for briefing.

In the alternative, since the courts below relied almost exclusively on the case of *Albaugh v. Tawes*, *supra*, and did not specifically address most of the other issues raised by petitioner, if the Supreme Court desires the benefit of a lower court's analysis of the other issues, the Supreme Court could vacate the decision of the Court of Appeals and remand the case to the Court of Appeals with instructions to consider the arguments of petitioner in the light of *Evans v. Cornman*, 308 U.S. 419, 26 L. Ed. 2d 370, 90 S. Ct 1752 (1970) and other cases concerning the election rights of residents of territory under federal jurisdiction.

Respectfully submitted,

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(202) 328-9799
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Representing himself as Petitioner

December 1997

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Decision of the United States Court of Appeals for the Fourth Circuit Dated September 9, 1997 Dismissing Plaintiff's Appeal

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96-2840

FRANK E. HOWARD,

Plaintiff - Appellant,

versus

STATE ADMINISTRATIVE BOARD OF ELECTION LAWS;

BOARD OF SUPERVISORS OF ELECTIONS OF PRINCE GEORGE'S COUNTY;

and

PARRIS GLENDENING, in his official capacity as Governor of the State of Maryland

Defendants - Appellees

COMMITTEE FOR THE CAPITAL CITY,

Amicus Curiae

Appeal from the United States District Court for the District of Maryland, at Baltimore. J. Frederick Motz, Chief District Judge. (CA-96-2558-JFM)

Submitted: August 28, 1997
Decided: September 9, 1997

Before WILKINS, WILLIAMS, and MICHAEL, Circuit Judges

Affirmed by unpublished per curiam opinion.

PER CURIAM

Appellant appeals the district court's order dismissing his complaint and denying his motion for reconsideration in this civil action, wherein he sought a declaration that as a resident of the District of Columbia he has a right to participate in the congressional elections in the state of Maryland. We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we affirm on the reasoning of the district court. Howard v. State Admin. Bd. of Election Laws, No. CA-96-2558-JFM (D. Md. Nov. 14, 1996). We deny amicus curiae's motion for oral argument and dispense with argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

Memorandum of the United States District Court for the District of Maryland Dated November 14, 1996 Granting Defendants' Motions to Dismiss

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

FRANK E. HOWARD	*	
	*	
v.	*	CIVIL NO. JFM-96-2558
	*	
STATE ADMINISTRATIVE BOARD OF ELECTION LAWS, et al.	*	
	*	
	*	
	*****	

MEMORANDUM

Plaintiff, a resident of the District of Columbia, has brought this action seeking a declaration that he has the right to participate in congressional elections in the State of Maryland. Plaintiff's primary arguments are foreclosed by a 1964 decision of this court that was affirmed by the Supreme Court of the United States. See Albaugh v. Tawes, 233 F.Supp. 576 (D.Md.), aff'd 379 U.S. 27 (1964).

Plaintiff makes one argument that was not addressed in Albaugh. This argument is based upon his prior residence in the state of Maryland. He asserts that defendants are denying him equal protection of the law because they do not permit him to vote in Maryland congressional elections although they do permit voting by members of the military and U.S. citizens living overseas whose last address within the geographical boundaries of the United States was in the State of Maryland. Maryland permits such voting pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. §§ 1973ff - 1973ff-6, which requires it to do so. Compliance with that Act provides a reasonable basis for defendants to distinguish

between persons covered by the Act and persons such as plaintiff who have chosen to move to the District where (under existing law) they are not permitted to vote in Maryland congressional elections.[1]

A separate order granting motions to dismiss filed by defendants is being entered herewith.

Date: November 14, 1996

/s/ J. Motz
J.Frederick Motz
United States
District Judge

[1]Although I am dismissing plaintiff's claim summarily because established law is clear, plaintiff is to be commended for having written a memorandum of significant historical interest. Plaintiff is also to be commended for not having sought a preliminary injunction or other emergency relief in regard to the 1996 elections.

Order of the United States District Court for the District of Maryland Dated November 14, 1996 Granting Judgment for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

FRANK E. HOWARD	*	
	*	
v.	*	CIVIL NO. JFM-96-2558
	*	
STATE ADMINISTRATIVE	*	
BOARD OF ELECTION	*	
LAWS, et al.	*	

*****

ORDER

For the reasons stated in the memorandum entered herewith, it is, this 14th day of November, 1996,

ORDERED:

1. Defendants' motions to dismiss are granted; and
2. Judgment is entered in favor of defendants against plaintiff.

/s/ J. Motz
J.Frederick Motz
United States
District Judge

Order of the United States District Court for the District of Maryland Dated November 28, 1996 Denying Plaintiff's Motion for Reconsideration

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

FRANK E. HOWARD	*	
	*	
v.	*	CIVIL NO. JFM-96-2558
	*	
STATE ADMINISTRATIVE BOARD OF ELECTION LAWS, et al.	*	
	*	
	*	
	*****	

ORDER

Upon consideration of plaintiff's motion to reconsider, it is, this 28th day of November, 1996,

ORDERED that said motion be denied.

/s/ J. Motz
J.Frederick Motz
United States
District Judge

United States Constitution

Article I, Section 2, Clause 1. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

Article I, Section 4, Clause 1. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each state by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

Article I, Section 8,

Clause 1: The Congress shall have the power . . .

Clause 17: To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; --And

Clause 18: To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Articles of Amendment

Amendment XIV, Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

. . .

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Amendment XVII. The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each States shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies; Provided, that the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Amendment XXIII, Section 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

An Act For Establishing the Temporary and Permanent Seat of the Government of the United States, ch. 28, 1 Stat. 130, (July 16, 1790)

An Act For Establishing the Temporary and Permanent Seat of the Government of the United States

Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That a district of territory, not exceeding ten miles square, to be located as hereafter directed on the river Potomac, at some place between the mouths of the Eastern Branch and Connogochegue, be, and the same is hereby accepted for the permanent seat of the government of the United States. *Provided nevertheless*, That the operation of the laws of the state within such district shall not be affected by this acceptance, until the time fixed for the removal of the government thereto, and until Congress shall otherwise by law provide.

Sec. 2. *And be it further enacted*, That the President of the United States be authorized to appoint, and by supplying vacancies happening from refusals to act or other causes, to keep in appointment as long as may be necessary, three commissioners, who, or any two of whom, shall, under the direction of the President, survey, and by proper metes and bounds define and limit a district of territory, under the limitations above mentioned; and the district so defined, limited and located, shall be deemed the district accepted by this act, for the permanent seat of the government of the United States.

Sec. 3. *And be it further enacted*, That the said commissioners, or any two of them, shall have power to purchase or accept such quantity of land on the eastern side of the said river, within the said district, as the President shall deem proper for the use of the United States, and according

to such plans as the President shall approve, the said commissioners, or any two of them, shall, prior to the first Monday in December, in the year one thousand eight hundred, provide suitable buildings for the accommodation of Congress, and of the President, and for the public offices of the government of the United States.

Sec. 4 *And be it [further] enacted*, That for defraying the expense of such purchases and buildings, the President of the United States be authorized and requested to accept grants of money.

Sec. 5. *And be it [further] enacted*, That prior to the first Monday in December next, all offices attached to the seat of the government of the United States, shall be removed to, and until the said first Monday in December, in the year one thousand eight hundred, shall remain at the city of Philadelphia, in the state of Pennsylvania, at which place the session of Congress next ensuing the present shall be held.

Sec. 6. *And be it [further] enacted*, That on the said first Monday in December, in the year one thousand eight hundred, the seat of the government of the United States shall, by virtue of this act, be transferred to the district and place aforesaid. And all offices attached to the said seat of government, shall accordingly be removed thereto by their respective holders, and shall, after the said day, cease to be exercised elsewhere; and that the necessary expenses of such removal shall be defrayed out of the duties on imposts and tonnage, of which a sufficient sum is hereby appropriated. (Approved, July 16, 1790, 1 Stat. 139, ch. 28).

An Act to Amend "An Act for Establishing the Temporary and Permanent Seat of the Government of the United States," ch. 17, 1 Stat 214 (March 3, 1791)

An Act to Amend "An Act for Establishing the Temporary and Permanent Seat of the Government of the United States"

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the act, entitled "An act for establishing the temporary and permanent seat of the government of the United States," as requires that the whole of the district of territory, not exceeding ten miles square, to be located on the river Potomac, for the permanent seat of the government of the United States, shall be located above the mouth of the Eastern Branch, be and is hereby repealed, and that it shall be lawful for the President to make any part of the territory below the said limit, and above the mouth of Hunting Creek, as part of the said district, so as to include a convenient part of the Eastern Branch, and of the lands lying on the lower side thereof, and also the town of Alexandria, and the territory so to be included, shall form a part of the district not exceeding ten miles square, for the permanent seat of the government of the United States, in like manner and to all intents and purposes, as if the same had been within the purview of the above recited act; *Provided*, That nothing herein contained, shall authorize the erection of the public buildings otherwise than on the Maryland side of the river Potomac, as required by the aforesaid act. (Approved, Mar. 3, 1791, 1 Stat. 214, ch. 17).

An Act Concerning the District of Columbia, Congress, ch. 15, 2 Stat. 103 (February 27, 1801)

An Act Concerning the District of Columbia

Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the laws of the state of Virginia, as they now exist, shall be and continue in force in that part of the District of Columbia, which was ceded by the said state to the United States, and by them accepted for the permanent seat of government; and that the laws of the state of Maryland, as they now exist, shall be and continue in force in that part of the said district, which was ceded by that state to the United States, and by them accepted as aforesaid.

Sec. 2. *And be it further enacted*, That the said district of Columbia shall be formed into two counties; one county shall contain all that part of said district, which lies on the east side of the river Potomac, together with the islands therein, and shall be called the county of Washington; the other county shall contain all that part of said district, which lies on the west side of said river, and shall be called the county of Alexandria; and the said river in its whole course through said district shall be taken and deemed to all intents and purposes to be within both of said counties.

Sec. 3. *Be it further enacted*, That there shall be a court in said district, which shall be called the circuit court of the district of Columbia; and the said court and the judges thereof shall have all the powers by law vested in the circuit courts and the judges of the circuit courts of the United States. Said court shall consist of one chief judge and two assistant judges resident within said district, to hold their respective offices during good behaviour; and two of whom shall constitute a quorum; and each of the said judges shall, before he enter on his office, take the oath or affirmation provided by law to be

taken by the judges of the circuit courts of the United States; and said court shall have power to appoint a clerk of the court in each of said counties, who shall take the oath and give a bond with sureties, in the manner directed for clerks of the district courts of in the act to establish the judiciary of the United States.

Sec. 4. *Be it further enacted*, That said court shall, annually, hold four sessions in each of said counties, to commence as follows, to wit: for the county of Washington, at the city of Washington, on the fourth Mondays of March, June, September and December; for the county of Alexandria, at Alexandria, on the second Mondays of January, April, July, and the first Monday of October.

Sec. 5. *Be it further enacted*, That said court shall have cognizance of all crimes and offenses committed within said district, ad of all cases in law and equity between parties, both or either of which shall be resident or be found within said district, and also of all actions or suits of a civil nature at common law or in equity, in which the United States shall be plaintiffs or complainants; and of all seizures on land or water, and all penalties and forfeitures made, arising or accruing under the laws of the United States.

Sec. 6. *Provided, and be it further enacted*, That all local actions shall be commenced in their proper counties, and that no action or suit shall be brought before said court, by any original process against any person, who shall not be an inhabitant of, or found within said district, at the time of serving the writ.

Sec. 7. *Be it further enacted*, That there shall be a marshal for the said district, who shall have the custody of the gaols of said counties, and be accountable for the safe keeping of all prisoners legally committed therein; and he shall be appointed for the same term, shall take the same oath, give a bond with sureties in the same manner, shall have generally, within said

district, the same powers, and perform the same duties, as is by law directed and provided in the case of marshals of the United States.

Sec. 8. *Be it further enacted*, That any final judgment, order or decree in said circuit court, wherein the matter in dispute, exclusive of costs, shall exceed the value of one hundred dollars, may be re-examined and reversed or affirmed in the supreme court of the United States, but writ of error or appeal, which shall be prosecuted in the same manner, under the same regulations, and the same proceedings shall be had therein, as is or shall be provided in the case of writs of error on judgments, or appeals upon orders or decrees, rendered in the circuit court of the United States.

Sec. 9. *Be it further enacted*, That there shall be appointed an attorney of the United States for said district, who shall take the oath and perform all the duties required of the district attornies of the United States; and the said attorney, marshal and clerks, shall be entitled to receive for their respective services, the same fees, perquisites and emoluments, which are by law allowed respectively to the attorney, marshal and clerk of the United States, for the district of Maryland.

Sec. 10. *Be it further enacted*, that the chief judge, to be appointed by virtue of this act, shall receive an annual salary of two thousand dollars, and the two assistant judges, of sixteen hundred dollars each, to be paid quarterly, at the treasury of the United States.

Sec. 11. *Be it further enacted*, That there shall be appointed in and for each of the said counties, such number of discreet persons to be justices of the peace, as the President of the United States shall from time to time think expedient, to continue in office five years; and such justices, having taken an oath for the faithful and impartial discharge of the duties of the office, shall, in all matters, civil and criminal, and in whatever relates to the conservation of the peace, have all the

powers vested in, and shall perform all the duties required of, justices of the peace, as individual magistrates, by the laws herein before continued in force in those parts of said district, for which they shall have been respectively appointed; and they shall have cognizance in personal demands to the value of twenty dollars, exclusive of costs; which sum they shall not exceed, any law to the contrary notwithstanding; and they shall be entitled to receive for their services the fees allowed for like services by the laws herein before adopted and continued, in the eastern part of said district.

Sec. 12. *And be it further enacted*, That there shall be appointed in and for each of the said counties, a register of wills, and a judge to be called the judge of the orphans' court, who shall each take an oath for the faithful and impartial discharge of the duties of his office; and shall have all the powers, perform all the duties, and receive the like fees, as are exercised, performed, and received, by the registers of wills and judges of the orphans' court, within the state of Maryland; and appeals from the said courts shall be to the circuit court of said district, who shall therein have all the powers of the chancellor of the said state.

Sec. 13. *And be it further enacted*, That in all cases where judgments or decrees have been obtained, or hereafter shall be obtained, on suits now depending in any of the courts of the commonwealth of Virginia, or of the state of maryland, where the defendant resides or has property within the district of Columbia, it shall be lawful for the plaintiff in such case upon filing an exemplification of the record and proceedings in such suits, with the clerk of the court of the county where the defendant resides, or his property may be found, to sue out writs of execution thereon, returnable to the said court, which shall be proceeded on, in the same manner as if the judgment or decree had originally be obtained in said court.

Sec. 14. *And be it further enacted*, That all actions, suits, process, pleadings, and other proceedings of what nature or

kind soever, depending or existing in the courts of Hustings for the towns of Alexandria and Georgetown, shall be, and hereby are continued over to the circuit courts to be holden by virtue of this act, within the district of Columbia, in manner following; that is to say: all such as shall then be depending and undetermined, before the court of Hustings for Georgetown, to the next circuit court hereby directed to be holden in the city of Washington: *Provided nevertheless*, that where the personal demand in such cases, exclusive of costs, does not exceed the value of twenty dollars, the justices of the peace within their respective counties, shall have cognizance hereof.

Sec. 15. *And be it further enacted*, That all writs and processes whatsoever, which shall hereafter issue from the courts hereby established within the district, shall be tested in the name of the chief judge of the district of Columbia.

Sec. 16. *And be it further enacted*, That nothing in this act contained shall in any wise alter, impeach or impair the rights, granted by or derived from the acts of incorporation of alexandria and Georgetown, or of any other body corporate or politic, within the said district, except so far as relates to the judicial powers of the corporations of Georgetown and Alexandria.

Approved, February 27, 1801.

Delegate to House of Representatives from District of Columbia, & Delegate from District of Columbia; applicability of certain Federal laws, Pub. L. No. 91-405, Title II, §§ 202, 204(a), 84 Stat. 848, 852 (Sept. 22, 1970), codified at 8 U.S.C.§§ 25a, 25b (1994 ed.).

Delegate to House of Representatives from District of Columbia, 8 U.S.C. § 25a

(a) The people of the District of Columbia shall be represented in the House of Representatives by a Delegate, to be known as the "Delegate to the House of Representatives from the District of Columbia", who shall be elected by the voters of the District of Columbia in accordance with the District of Columbia Election Act. The Delegate shall have a seat in the House of Representatives, with the right of debate, but no of voting, shall have all the privileges granted a Representative by section 6 of Article I of the Constitution, and shall be subject to the same restrictions and regulations as are imposed by law or rules on Representatives. The Delegate shall be elected to serve during each Congress.

(b) No individual may hold the office of Delegate to the House of Representatives from the District of Columbia unless on the date of his election -

(1) he is a qualified elector (as that term is defined in section 2(2) of the District of Columbia Election Act) of the District of Columbia;
(2) he is at least twenty-five years of age;
(3) he holds no other paid public office; and
(4) he has resided in the District of Columbia continuously since the beginning of the three-year period ending on such date.

He shall forfeit his office upon failure to maintain the qualifications required by this subsection.
(Sept. 22, 1970, P.L. 91-405, Title II § 202, 84 Stat. 848.)

Delegate from District of Columbia; applicability of certain Federal laws, 2 U.S.C. § 25b.

The provisions of law which appear in -

(1) section 25 (relating to oath of office),
(2) section 31 (relating to compensation),
(3) section 34 (relating to payment of compensation),
(4) section 35 (relating to payment of compensation),
(5) section 37 (relating to payment of compensation),
(6) section 38a (relating to compensation),
(7) section 39 (relating to deductions for absence),
(8) section 40 (relating to deductions for withdrawal),
(9) section 40a (relating to deductions for delinquent indebtedness),
(10) section 41 (relating to prohibition on allowance for newspapers),
(11) section 42c (relating to postage allowance),
(12) section 46b (relating to stationery allowance),
(13) section 46b-1 (relating to stationery allowance),
(14) section 46b-2 (relating to stationery allowance),
(15) section 46g (relating to telephone, telegraph, and radio-telegraph allowance),
(16) section 47 (relating to payment of compensation),
(17) section 48 (relating to payment of compensation),
(18) section 49 (relating to payment of compensation),
(19) section 50 (relating to payment of compensation),
(20) section 54 (relating to provision of United States Code Annotated or Federal Code Annotated),
(21) section 60g-1 (relating to clerk hire),
(22) section 60g-2(a) (relating to interns),
(23) section 80 (relating to payment of compensation),
(24) section 81 (relating to payment of compensation),
(25) section 82 (relating to payment of compensation),
(26) section 92 (relating to clerk hire),
(27) section 92b (relating to pay of clerical assistants),
(28) section 112e (relating to electrical and mechanical office equipment),

(29) section 122 (relating to office space in the District of Columbia), and
(30) section 123b (relating to House Recording Studio),

of title 2 of the United States Code shall apply with respect to the Delegate to the House of Representatives from the District of Columbia in the same manner and to the same extent as they apply with respect to a Representative. The Federal Corrupt Practices Act and the Federal Contested Election Act shall apply with respect to the Delegate to the House of Representatives from the District of Columbia in the same manner and to the same extent as they apply with respect to a Representative.
(Sept. 22, 1970, P.L. 91-405, Title II, § 204(a), 84 Stat. 852.)

Uniformed and Overseas Citizens Absentee Voting Act 42 U.S.C. §§ 1973ff - 1973ff-6 (1994 ed.)

Registration and Voting by Absent Uniformed Services Voters and Overseas Voters in Elections for Federal Office
§ 1973ff. Federal responsibilities
(a) Presidential designee

The President shall designate the head of an executive department to have primary responsibility for Federal functions under this subchapter.

(b) Duties of Presidential designee

The Presidential designee shall -

(1) consult State and local election officials in carrying out this subchapter;

(2) prescribe an official post card form, containing both an absentee voter registration application and an absentee ballot application, for use by the States as recommended in section 1973ff-3 of this title;

(3) carry out section 1973ff-2 of this title with respect to the Federal write-in absentee ballot for overseas voters in general elections for Federal office;

(4) prescribe a suggested design for absentee ballot mailing envelopes for use by the States as recommended in section 1973ff-3 of this title;

(5) compile and distribute (A) descriptive material on State absentee registration and voting procedures, and (B) to the extent practicable, facts relating to specific elections, including dates, offices involved, and the text of ballot questions; and

(6) not later than the end of each year after a Presidential election year, transmit to the President and the Congress a report on the effectiveness of assistance under this subchapter, including a statistical analysis of voter participation and a description of State-Federal cooperation.

(c) Duties of other Federal officials

(1) In general

The head of each Government department, agency, or other entity shall, upon request of the Presidential designee, distribute balloting materials and otherwise cooperate in carrying out this subchapter.

(2) Administrator of General Services

As directed by the Presidential designee, the Administrator of General Services shall furnish official post card forms (prescribed under subsection (b) of this section) and Federal write-in absentee ballots (Prescribed under section 1973ff-2 of this title).

(Pub. L. 99-410, title I § 101, Aug. 28, 1986, 100 Stat. 924.)

§ 1973ff-1. State responsibilities

Each State shall -

(1) permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office;

(2) accept and process, with respect to any general, special, primary, or runoff election for Federal office, any otherwise valid voter registration application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election; and

(3) permit overseas voters to use Federal write-in absentee ballots (in accordance with section 1973ff-2 of this title) in general elections for Federal office.

(Pub. L. 99-410, title I, § 102, Aug. 28, 1986, 100 Stat. 925)

§ 1973ff-2. Federal write-in absentee ballot for overseas voters in general elections for Federal office

(a) In general

The Presidential designee shall prescribe a Federal write-in absentee ballot (including a secrecy envelope and mailing envelope for such ballot) for use in general elections for Federal office by overseas voters who make timely application for, and do not receive, States, absentee ballots.

(b) Submission and processing

Except as otherwise provided in this subchapter, a Federal write-in absentee ballot shall be submitted and processed in the manner provided by law for absentee ballots in the State involved. A Federal write-in absentee ballot of an overseas voter shall not be counter -

(1) if the ballot is submitted from any location in the United States;

(2) if the application of the overseas voter for a State absentee ballot is received by the appropriate State election official less than 30 days before the general election; or

(3) if a State absentee ballot of the overseas voter is received by the appropriate State election official not later than the deadline for receipt of the State absentee ballot under State law.

(c) Special rules

The following rules shall apply with respect to Federal write-in absentee ballots:

(1) In completing the ballot, the overseas voter may designate a candidate by writing in the name of the candidate or by writing in the name of a political party (in which case the ballot shall be counted for the candidate of that political party).

(2) In the case of the offices of President and Vice President, a vote for a named candidate or a vote by writing in the name of a political party shall be counted as a vote for the electors supporting the candidate involved.

(3) Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be disregarded in determining the validity of the ballot, if the intention of the voter can be ascertained.

(d) Second ballot submission; instruction to overseas voter

An overseas voter who submits a Federal write-in absentee ballot and later receives a State absentee ballot, may submit the State absentee ballot. The Presidential designee shall assure that the instructions for each Federal write-in absentee ballot clearly state that an overseas voter who submits a Federal write-in absentee ballot and later receives and submits

a State absentee ballot should make every reasonable effort to inform the appropriate State election official that the voter has submitted more than one ballot.

(e) Use of approved State absentee ballot in place of Federal write-in absentee ballot

The Federal write-in absentee ballot shall not be valid for use in a general election if the State involved provides a State absentee ballot that -

(1) at the request of the State, is approved by the Presidential designee for use in place of the Federal write-in absentee ballot; and

(2) is made available to overseas voters at least 60 days before the deadline for receipt of the State ballot under State law.

(f) Certain States exempted

A State is not required to permit use of the Federal write-in absentee ballot, if, on and after August 28, 1986, the State has in effect a law providing that -

(1) a State absentee ballot is required to be available to any voter described in section 1973ff-6(5)(A) of this title at least 90 days before the general election involved; and

(2) a State absentee ballot is required to be available to any voter described in section 1973ff-6(5)(B) or (C) of this title, as soon as the official list of candidates in the general election is complete.

(Pub. L. 99-410, title I, § 103, Aug. 28, 1986, 100 Stat. 925)

§ 1973ff-3. Recommendations to States to maximize access to polls by absent uniformed services voters and overseas voters

To afford maximum access to the polls by absent uniformed services voters and overseas voters, it is recommended that the States -

(1) use the official post card form (prescribed under section 1973ff of this title) for simultaneous voter registration application and absentee ballot application;

(2) adopt the suggested design for absentee ballot mailing envelopes prescribed under section 1973ff of this title;

(3) waive registration requirements for absent uniformed services voters and overseas voters who, by reason of service or residence, do not have an opportunity to register;

(4) if an application other than an official post card form (prescribed under section 1973ff of this title) is required for absentee registration, provide that registration forms be sent with the absentee ballot and may be returned with it;

(5) expedite processing of balloting materials with respect to absent uniformed services voters and overseas voters;

(6) permit any oath required for a document under this subchapter to be administered by a commissioned officer of the Armed Forces or any official authorized to administer oaths under Federal law or the law of the State or other place where the oath is administered;

(7) assure that absentee ballots are mailed to absent uniformed services voters and overseas voters at the earliest opportunity;

(8) assist the Presidential designee in compiling statistical and other information relating to this subchapter; and

(9) provide late registration procedures for persons recently separated from the Armed Forces.

(Pub. L. 99-410, title I, § 104, Aug. 28, 1987, 100 Stat. 926.)

§ 1973ff-4 Enforcement

The Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as may be necessary to carry out this subchapter.

(Pub. L. 99-410, title I, § 105, Aug. 28, 1986, 100 Stat. 927.)

§ 1973ff-5 Effect on certain other laws

The exercise of any right under this subchapter shall not affect, for purposes of any Federal, State, or local tax, the residence or domicile of a person exercising such right.

(Pub. L. 99-410, title I, § 106, Aug. 28, 1986, 100 Stat. 927.)

§ 1973ff-6 Definitions

As used in this subchapter, the term -

(1) "absent uniformed services voter" means -

(A) a member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(B) a member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; and

(C) a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote;

(2) "balloting materials" means official post card forms (prescribed under section 1973ff of this title), Federal write-in absentee ballots (prescribed under section 1973ff-2 of this title), and any State balloting materials that, as determined by the Presidential designee, are essential to the carrying out of this subchapter;

(3) "Federal office" means the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(4) "member of the merchant marine" means an individual (other than a member of a uniformed service or an individual employed, enrolled, or maintained on the Great Lakes or the inland waterways) -

(A) employed as an officer or crew member of a vessel owned by the United States, or a vessel of foreign-flag registry under charter to on control of the United States; or

(B) enrolled with the United States for employment or training for employment, or maintained by the United States for emergency relief service, as an officer or crew member of any such vessel;

(5) "overseas voter" means -

(A) an absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved;

(B) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(C) a person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.

(6) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa;

(7) "Uniformed services" means the Army, Navy, Air Force, Marine Corps, and Coast Guard, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration; and

(8) "United States", where used in the territorial sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

(Pub. L. 99-410, title I, § 107, Aug. 28, 1986, 100 Stat. 927.)

National Voter Registration, 42 U.S.C. §§ 1973gg - 1973gg-10 (excerpts).

§ 1973gg. Findings and purposes

(a) Findings

The Congress finds that -

(1) the right of citizens of the United States to vote is a fundamental right;

(2) it is the duty of the Federal, State, and local governments to promote the exercise of that right; and

(3) discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionally harm voter participation by various groups, including racial minorities.

(b) Purposes

The purposes of this subchapter are -

(1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;

(2) to make it possible for Federal, State, and local governments to implement this subchapter in a manner that ehnances the participation of eligible citizens as voters in elections for Federal office;

(3) to protect the integrity of the electoral process; and

(4) to ensure that accurate and current voter registration rolls are maintained.

(Pub. L. 103-31, § 2, May 20, 1993, 107 Stat. 77.)

§ 1973gg-1. Definitions

As used in this subchapter -

(1) the term "election" has the meaning stated in section 431(1) of title 2;

(2) the term "Federal office" has the meaning stated in section 431(3) of title 2;

(3) the term "motor vehicle driver's license" includes any personal identification document issued by a State motor vehicle authority;

(4) the term "State" means a State of the United States and the District of Columbia; and

(5) the term "voter registration agency" means an office designated under section 973gg-5(a)(1) of this title to perform voter registration activities.

(Pub. L. 103-31, § 3, May 20, 1993, 107 Stat. 77.)

§ 1973gg-2. National procedures for voter registration for elections for Federal office

(a) In general

Except as provided in subsectiion (b) of this section, notwithstanding any other Federal or State law, in addition to any other method of voter registration provided for under State law, each State shall establish procedures to register to vote in elections for Federal office -

(1) by application made simultaneously with an application for a motor vehicle driver's license pursuant to section 1973gg-3 of this title;

(2) by mail application pursuant to section 1973gg-4 of this title; and

(3) by application in person -

(A) at the appropriate registration site designated with respect to the residence of the applicant in accordance with State law; and

(B) at a Federal, State, or nongovernmental office designated under section 1973gg-5 of this title.

(b) Nonapplicability to certain States

This subchapter does not apply to a State described in either or both of the following paragraphs:

(1) A State in which, under law that is in effect continuously on and after March 11, 1993, there is no voter registrationn requirement for any voter in the State with respect to an election for Federal office.

(2) A State in which, under law that is in effect continuously on and after March 11, 1993, or that was enacted on or prior to March 11, 1993, and by its terms is to come into effect upon the enactment of this subchapter,

so long as that law remains in effect, all voters in the State may register to vote at the polling place at the time of voting in a general election for Federal office.

(Pub. L. 103-31, § 4, May 20, 1993, 107 Stat. 78.)

§ 1973gg-3. Simultaneous application for voter registration and application for motor vehicle driver's license

(a) In general

(1) Each State motor vehicle driver's license application (including any renewal application) submitted to the appropriate State motor vehicle authority under State law shall serve as an application for voter registration with respect to elections for Federal office, unless the applicant fails to sign the voter registration application.

(2) An application for voter registration submitted under paragraph (1) shall be considered as updating any previous voter registration by the applicant.

(b) Limitation on use of information

No information relating to the failure of an applicant for a State motor vehicle driver's license to sign a voter registration application may be used for any purpose other than voter registration.

(c) Forms and procedures

(1) Each State shall include a voter registration application form for elections for Federal office as part of an application for a State motor vehicle driver's license.

(2) The voter registration application portion of an application for a State motor vehicle driver's license -

(A) may not require any information that duplicates information required in the driver's license portion of the form (other than a second signature or other information necessary under subparagraph (C);

(B) may require only the minimum amount of information necessary to -

(i) prevent duplicate voter registrations; and

(ii) enable State election officials to assess the eligibility of the applicant and to administer voter registration and other parts of the election process;

(C) shall include a statement that -

(i) states each eligibility requirement (including citizenship);

(ii) contains an attestation that the applicant meets each such requirement; and

(iii) requires the signature of the applicant, under penalty of perjury

(D) shall include, in print that is identical to that used in the attestation portion of the application -

(i) the information required in section 1973gg-6(a)(5)(A) and (B) of this title;

(ii) a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will be used only for voter registration purposes; and

(iii) a statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes; and

(E) shall be made available (as submitted by the applicant, or in machine readable or other format) to the appropriate State election official as provided by State law.

(d) Change of address

Any change of address form submitted in accordance with State law for purposes of a State motor vehicle driver's license shall serve as notification of change of address for voter registration with respect to elections for Federal office for the registrant involved unless the registrant states on the form that the change of address is not for voter registration purposes.

(e) Transmittal deadline

(1) Subject to paragraph (2), a completed voter registration portion of an application for a State motor vehicle driver's license accepted at a State motor vehicle authority shall be

transmitted to the appropriate State election official not later than 10 days after the date of acceptance.

(2) If a registration application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate State election official not later than 5 days after the date of acceptance.

(Pub. L. 103-31 § 5, May 20, 1993, 107 Stat. 78.)

§ 1973gg-4. Mail registration

(a) Form

(1) Each State shall accept and use the mail voter registration application form presecibed by the Federal Election Commission pursuant to section 1973gg-7(a)(2) of this title for the registration of voters in elections for Federal office.

(2) In addition to accepting and using the form described in paragraph (1), a State may develop and use a mail voter registration form that meets all of the criteria stated in section 1973gg-7(b) of this title for the registration of voters in elections for Federal office.

(3) A form described in paragraph (1) or (2) shall be accepted and used for notification of a registrant's change of address.

(b) Available of forms

The chief State election official of a State shall make the forms described in subsection (a) of this section available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration programs.

(c) First-time voters

(1) Subject to paragraph (2), a State may by law require a person to vote in person if -

(A) the person was registered to vote in a jurisdiction by mail; and

(B) the person has not previously voted in that jurisdiction.

(2) Paragraph (1) does not apply in the case of a person -

(A) who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act [42 U.S.C. 1973ff et seq.];

(B) who is provided the right to vote otherwise than in person under section 1973ee-1(b)(2)(B)(ii) of this title; or

(C) who is entitled to vote otherwise than in person under any other Federal law.

(d) Undelivered notices

If a notice of the disposition of a mail voter registration application under section 1973gg-6(a)(2) of this title is sent by non-forwardable mail and is returned undelivered, the registrar may proceed in accordance with section 1973gg-6((d) of this title.

(Pub. L. 103-31, § 6, May 20, 1993, 107 Stat. 79.)

[§§ **1973gg-5** through **1973gg-10** are omitted from this appendix]

Constitution of Maryland: Article 1. Section 1. Elective Franchise. Laws of Maryland 1956, ch. 99 (ratified Nov. 6, 1956); Laws of Maryland 1969, ch. 784 (ratified Nov. 3, 1970; Laws of Maryland 1977, ch. 681 (ratified Nov. 7, 1978)

Article 1. Section 1. Elections to be by ballot; qualifications of voters; election districts

All elections shall be by ballot. Every citizen of the United States, of the age of 18 years or upwards, who is a resident of the State as of the time for the closing of registration next preceding the election, shall be entitled to vote in the ward or election district in which he resides at all elections to be held in this State. A person once entitled to vote in any election district, shall be entitled to vote there until he shall have acquired a residence in another election district or ward of this State. (1904, ch. 96, rejected Nov. 7, 1905; 1908, ch. 26, rejected Nov. 2, 1909; 1956, ch 99, ratified Nov. 6, 1956; 1969, ch. 784, ratified Nov. 3, 1970; 1977, ch 681, ratified Nov. 7, 1978.)

An Act to Cede to Congress a District of Ten Miles Square in This State for the Seat of the Government of the United States, 1788 Md. Laws ch. 46 (December 23, 1788)

An Act to Cede to Congress a District of Ten Miles Square in This State for the Seat of the Government of the United States

Be it enacted, by the General Assembly of Maryland, That the representatives of this state in the house of representatives in the congress of the United States, appointed to assemble at New York on the first Wednesday of March next, be and they are hereby authorized and required, on the behalf of this state, to cede to the congress of the United States, any district in this state, not exceeding ten miles square, which the congress may fix upon and accept for the seat of government of the United States. (Md. Act, December 23, 1788, ch 46)

An Act Concerning the Territory of Columbia and the City of Washington, 1791 Md. Laws ch. 45 (December 19, 1791)

An Act Concerning the Territory of Columbia and the City of Washington

Whereas the President of the United States, by virtue of several acts of Congress, and acts of the assemblies of Maryland and Virginia, by his proclamation, dated at Georgetown on the thirtieth day of March, seventeen hundred and ninety-one, did declare and make known that the whole of the territory of ten miles square, for the permanent seat of government of the United States, shall be located and included within the four lines following, that is to say: Beginning at Jones Point, being the upper point of Hunting Creek, in Virginia, and at an angle at the outset forty-five degrees west of north, and running a direct line ten miles for the first line; then beginning again at the same Jones Point and running another direct line at a right angle with the first across the potomac ten miles for the second line; then from the terminations of the said first and second lines running to other direct lines ten miles each, the one across the Eastern Branch and the other Potomac, and meeting each other in a point, which has since been called the Territory of Columbia; and,

Whereas Notley Young, Daniel Carroll, of Duddington, and many others, proprietors of the greater part of the land hereinafter mentioned to have been laid out in a city, came into an agreement, and have conveyed their lands in trust to Thomas Beall, son of George, and John Mackall Gantt, whereby they have subjected their lands to be laid out as a city, given up part to the United States, and subjected other parts to be sold to raise money as a donation to be employed according to the act of Congress for establishing the temporary and permanent seat of the Government of the United States, under and upon the terms and conditions contained in each of the said deeds; and many of the proprietors of lots in Carrollsburg and Hamburg have also come into an agreement,

subjecting their lots to be laid out anew, giving up one-half of the quantity of their lots in the new location, or otherwise compensated in land in a different situation within the city, by agreement between the Commissioners and them, and in case of disagreement, that then a just a full compensation shall be made in money; yet some of the proprietors of other lands, have not, from imbecility and other causes, come into any agreement concerning their lands within the limits hereinafter mentioned, but a very great number of the landholders having agreed on the same terms, the President of the United States directed a city to be laid out comprehending all the lands beginning on the east side of Rock Creek, at a stone standing in the middle of the road leading from Georgetown to Bladensburgh; thence along the middle of the said road to a stone standing on the east side of the Reedy Branch of Goose Creek; thence southeasterly, making an angle of sixty-one degrees and twenty minutes with the meridian, to a stone standing in the road leading from Bladensburgh to the Eastern Branch ferry; then south to a stone eighty poles north of the east and west line already drawn from the mouth of Goose Creek to the Eastern Branch; then east, parallel to the said east and west line, to the Eastern Branch; then with the waters of the Eastern Branch; Potomac River, and Rock Creek to the beginning, which has since been called the City of Washington; and

Whereas it appears to this general assembly highly just and expedient that all the lands within the said city should contribute, in due proportion, in the means which have already greatly enhanced the value of the whole; that an incontrovertible title ought to be made to the purchasers, under public sanction; that allowing foreigners to hold land within the said territory will greatly contribute to the improvement and population thereof; and that many temporary provisions will be necessary till Congress exercise the jurisdiction and government over the said territory; and

Whereas in the cession of this State, heretofore made, of territory for the Government of the United States, the lines of such cession could not be particularly designated; and it being

expedient and proper that the same should be recognized in the acts of this State -

2. *Be it enacted by the General Assembly of Maryland*, That all that part of the said territory called Columbia which lies within the limits of this State shall be, and the same is hereby, acknowledged to be forever ceded and relinquished to the Congress and Government of the United States, and full and absolute right and exclusive jurisdiction, as well of soil as of persons residing or to reside thereon, pursuant to the tenor and effect of the eighth section of the first article of the Constitution of Government of the United States: *Provided*, That nothing herein contained shall be so construed to vest in the United States any right of property in the soil as to affect the rights of individuals therein, otherwise than the same shall or may be transferred by such individuals to the United States: *And provided also*, That the jurisdiction of the laws of this State over the persons and property of individuals residing within the limits of the cession aforesaid shall not cease or determine until Congress shall, by law, provide for the government thereof, under their jurisdiction, in manner provide for the government thereof, under their jurisdiction, in manner provided by the article of the Constitution before recited.

3. *And be it enacted*, That all the lands belonging to minors, persons absent out of the State, married women, or persons non compos mentis, or the lands the property of this State, within the limits of Carrollsburg and Hamburg, shall be and are hereby subjected to the terms and conditions hereinbefore recited, as to the lots where the proprietors thereof have agreed concerning the same; and all the other lands, belonging as aforesaid, within the limits of the said city of Washington, shall be and are hereby, subjected to the same terms and conditions as the said Notley Young, Daniel Carroll, of Duddington, and others, have by their said agreements and deeds, subjected their lands to, and where no conveyances have been made, the legal estate and trust are hereby invested

in the said Thomas Beall, son of George, and John mackall Gantt, in the same manner as if each proprietor had been competent to make, and had made a legal conveyance of his or her land, according to the form of those already mentioned, with proper acknowledgments of the execution thereof, and where necessary, of release of dower, and in every case where the proprietor is an infant, a married woman, insane, absent out of the State, or shall not attend on three months' advertisement of notice in the Maryland Journal and Baltimore Advertiser, the Maryland Herald, and in the Georgetown and Alexandria papers, so that allotment can not take place by agreement, the commissioners, aforesaid, or any two of them, may allot or assign the portion or share of such proprietor as near the old situation as may be, in Carrollsburg and Hamburg, and to the full value of what the party might claim under the terms before recited; and as to the other lands within the said city, the commissioners aforesaid, or any two of them, shall make such allotment and assignment, within the land belonging to the same person, in alternate lots, determined by lot or ballot, whether the party shall begin with the lowest number: *Provided*, That in the cases of coverture and infancy, if the husband, guardian, or next friend will agree with the commissioners, or any two of them, then an effectual division may be made by consent; and in case of contrary claims, if the claimants will not jointly agree, the commissioners may proceed as if the proprietor was absent; and all persons to whom allotments and assignments of lands shall be made by the commissioners, or any two of them, on consent and agreement, or pursuant to this act without consent, shall hold the same in their former estate and interest, and in lieu of their former quantity, and subject in every respect to all such limitations, conditions, and incumbrances as their former estate and interest, and in lieu of their former quantity, and subject in every respect to all such limitations, conditions, incumbrances as their former estates and interests were subject to, and as if the same had been actually reconveyed pursuant to the said deed in trust.

4. *And be it enacted*, That where the proprietor or proprietors, possessor or possessors, of any lands within the limits of the City of Washington, or within the limits of Carrollsburg or Hamburg, who have not already, or who shall not, within three months of this act, execute deeds in trust to the aforesaid Thomas Beall and John M. Gantt, of all their land within the limits of the said city of Washington, and on the terms and conditions mentioned in the deeds already executed by Notley Young and others, and execute deeds in trust to the said Thomas Beall and John M. Gantt of all their lots in the towns of Carrollsburg and Hamburg on the same terms and conditions contained in the deeds already executed by the greater part of the proprietors of lots in the said towns, the said commissioners, or any two of them, shall and may, at any time or times thereafter, issue a process, directed to the sheriff of Prince Georges County, commanding him, in the name of the State, to summon five good substantial freeholders, who are not of kin to any proprietor or proprietors of the lands aforesaid, and who are not proprietors themselves, to meet on a certain day, and at a certain place within the limits of the said city, to inquire of the value of the estate of such proprietor or proprietors, possessor or possessors, on which day and place the said sheriff shall attend, with the freeholders by him summoned, which freeholders shall take the following oath, or affirmation, on the land to be by them valued, to with: "I, A. B., do solemnly swear (or affirm) that I will, to the best of my judgment, value the lands of C. D. now to be valued so as to do equal right and justice to the said C. D. and to the public taking into consideration all circumstances," and shall then proceed to value the said lands; and such valuation, under their hands and seals and under the hand and seal of the said sheriff, shall be annexed to the said process and returned by the sheriff to the clerk appointed by virtue of this act, who shall make record of the same, and the said lands shall, on the payment of such valuation, be and is hereby vested in the said commissioners in trust, to be disposed of by them or otherwise employed to the use of the said city of Washington; and the sheriff

aforesaid and freeholders aforesaid shall be allowed the same fees for their trouble as are allowed to a sheriff and juryman in executing a writ of inquiry; and in all cases where the proprietor or possessor is tenant in right of dower or by the courtesy the freeholders aforesaid shall ascertain the annual value of the lands and the gross value of such estate therein, and upon paying such gross value or securing to the possessor the payment of the annual valuation, at the option of the proprietor or possessor, the commissioners shall be and are hereby vested with the whole estate of such tenant, in many and for the uses and purposes aforesaid.

5. *And be it enacted*, That all the squares, lots, and parcels of land within the said city which have been or shall be appropriated for the use of the United States, and all the lots and parcels which have been or shall be sold to raise money as a donation as aforesaid shall remain and be to the purchasers, according to the terms and conditions of their respective purchase; and purchases and leases from private persons claiming to be proprietors, and having, or those under whom they claim having, been in the possession of the lands purchased or leased, in their own right, five whole years next before the passing of this act, shall be good and effectual for the estate, and on the terms and conditions of such purchases and leases, respectively, without impeachment, and against any contrary title now existing; but if any person hath made a conveyance, or shall make a conveyance or lease, of any lands within the said city, not having right and title to do so, the person who might be entitled to recover the land under a contrary title now existing may, either by way of ejectment against the tenant or in an action for money had and received for his use against the bargainer or lessor, his heirs, executors, administrators, or devisees, as the case may require, recover all money received by him for the squares, pieces, or parcels appropriated for the use of the United States, as well as for lots or parcels sold and rents received by the person not having title as aforesaid, with interest from the time of receipt; and on such recovery in ejectment, where the

land is in lease, the tenant shall thereafter hold under, and pay the rent reserved to, the person making title to and recovering the land; but the possession bona fide acquired in none of the said cases shall be changed.

6. *And be it enacted*, That any foreigner may, by deed or will hereafter to be made, take and hold lands within that part of the said territory which lies within this State in the same manner as if he were a citizen of this State; and the same lands may be conveyed by him, and transmitted to, and inherited by his heirs or relations, as if he and they were citizens of this State; provided that no foreigner shall, in virtue hereof, be entitled to any further or other privilege of a citizen.

7. *And be it enacted*, That the said commissioners, or any two of them, may appoint a clerk for recording deeds of land within the said territory, who shall provide a proper book for the purpose, and therein record, in a strong, legible hand, all deeds duly acknowledged, of lands in the said territory, delivered to him to be recorded, and in the same book make due entries of all divisions and allotments of lands and lots made by the commissioners in pursuance of this act, and certificates granted by them of sales, and the purchase money having been paid, with a proper alphabet in the same book of the deeds and entries aforesaid; and the same book shall carefully preserve and deliver over to the commissioners aforesaid, or their successors, or such person or persons as Congress shall hereafter appoint, which clerk shall continue such during good behaviour, and shall be removable only on a conviction or misbehaviour in a court of law; but before he acts as such he shall take an oath or affirmation well and truly to execute his office, and he shall be entitled to the same fees as are or may be allowed to the clerks of the county courts for searches, copying, and recording.

8. *And be it enacted*, That acknowledgments of deeds made before a person in the manner and certified as the laws of this

State direct or made before, and certified by, either of the commissioners shall be effectual; and that no deed hereafter to be made, of or for lands within that part have been acknowledged as aforesaid, and delivered to of the said territory which lies within this State, shall operate as a legal conveyance, nor shall any lease for more than seven years be effectual, unless the deed shall the said clerk to be recorded within six calendar months from the date thereof.

9. *And be it enacted*, That the commissioners aforesaid, or some two of them, shall direct an entry to be made in the said record book of every allotment and assignment to the respective proprietors in pursuance of this act.

10. And for the encouragement of master builders to undertake the building and finishing houses within the said city by securing to them a just and effectual remedy for their advances and earnings, *Be it enacted*, That for all sums due and owing on written contracts for the building any house in the said city, or the bricky ork or carpenters' or joiners' work thereon, the undertaker o workmen employed by the person for whose use the house s ll be built shall have a lien on the house and the ground on w ich the same is erected, as well as for the materials found by him: *Provided*, The said written contract shall have been acknowledged before one of the commissioners, a justice of the peace, or an alderman of the corporation of Georgetown and recorded in the office of the clerk for recording deeds, herein created, within six calendar months from the time of acknowledgment as aforesaid, and if within two years after the last of the work is done he proceeds in equity he shall have as upon a mortgage, or if he proceeds at law within the same time he may have execution against the house and land, in whose hands soever the same may be; but this remedy shall be considered as additional only, nor shall, as to the land, take place of any legal incumbrance made prior to the commencement of such claim.

11. *And be it enacted*, That the treasurer of the western shore be empowered and required to pay the seventy-two thousand dollars agreed to be advanced to the President by resolutions of the last sessions of assembly, in sums as the same may come to his hands on the appointed funds, without waiting for the day appointed for the payment thereof.

12. *And be it enacted*, That the Commissioners aforesaid for the time being, or any two of them, shall from time to time, until Congress shall exercise the jurisdiction and government within the said Territory, have power to license the building of wharves in the waters of the Potomac and the Eastern Branch, adjoining the said city, of the materials, in the manner and of the extent they may judge durable, convenient, and agreeing with the general order; but no license shall be granted to one to build a wharf before the land of another, nor shall any wharf be guilt in the waters without license as aforesaid; and if any wharf shall be built without such license, or different therefrom, the same is hereby declared a common nuisance. They may also, from time to time, make regulations for the discharge and laying of ballast from ships or vessels lying in the Potomac River above the lower line of the said Territory and Georgetown, and from ships and vessels lying in the Eastern Branch. They may also, from time to time, make regulations for landing and laying materials for building the said city, for disposing and laying earth which may be dug out of the wells, cellars, and foundations and for ascertaining the thickness of the walls of houses, and to enforce the observance of all such regulations by appointing penalties for the breach of any one of them not exceeding ten pounds current money, which may be recovered in the name of the said commissioners, by warrant, before a justice of the peace, as in case of small debts, and disposed of as a donation for the purpose of the said act of Congress. And the said Commissioners, or any two of them, may grant licenses for retailing distilled spirits within the limits of the said city, and suspend or declare the same void. And if any person shall retail or sell any distilled spirits, mixed or unmixed, in less

than ten gallons to the same person, or at the same time actually delivered, he or she shall forfeit for every such sale three pounds, to be recovered and applied as aforesaid.

13. *And be it enacted*, That an act of assembly of this State to condemn lands, if necessary, for the public buildings of the United States be, and is hereby, repealed. (Md. Act, 1791, ch. 45.)

A Supplement to the Act Entitled "An Act Concerning the Territory of Columbia and the City of Washington, 1791 Md. Laws, ch. 49 (December 23, 1792)

A Supplement to the Act Entitled "An Act Concerning
the Territory of Columbia and the
City of Washington"

Whereas, doubts have arisen upon the act to which this is a supplements, whether it be essential to the validity of deeds and other conveyances of land in that part of the Territory of Columbia which lies within this state, that the same be recorded in the manner prescribed by the laws of this state before the passage of the said act; to remove which doubts -

2. *Be it enacted, by the General Assembly of Maryland*, That all deeds and other conveyances of land lying within the said territory, and recorded agreeably to the directions and provisions of the said act by the clerk appointed in the manner therein provided for the recording of deeds within the said territory, shall be as good, valid, and sufficient, in law, for the purposes of passing the estates therein mentioned, and for all other purposes, as if the same were also recorded in the manner prescribed by the laws of this state, before the passage of the said act for the recording of deeds and other conveyances of land within this state. (Md. Act, 1792, ch. 49.)

A Further Supplement to the Act Concerning the Territory of Columbia and the City of Washington, 1793 Md. Laws, ch. 58 (December 28, 1793)

A Further Supplement to the Act Concerning the
Territory of Columbia and the
City of Washington

Be it enacted, by the General Assembly of Maryland, That the certificates granted, or which may be granted, by the said commissioners, or any two of them, to purchasers of lots in the said city, with acknowledgment of the payment of the whole purchase money, and interest, if any shall have arisen thereon, and recorded agreeably to the directions of the act concerning the territory of Columbia and city of Washington, shall be sufficient and effectual to vest the legal estate in the purchasers, their heirs and assigns, according to the import of such certificates, without any deed or formal conveyance.

II. *And be it enacted*, That on sales of lots in the said city by the said commissioners, or any two of them, under terms or conditions of payment being therefor at any day or days after such contract entered into, if any sum of the purchase money or interest shall not be paid for the space of thirty days after the same ought to be paid, the commissioners, or any two of them, may sell the same lots at public vendue, in the city of Washington, at any time after sixty days notices of such sale, in some of the public newspapers of George-town and Baltimore-town, and retain in their hands sufficient of the money produced by such new sale to satisfy all principal and interest due on the first contract, together with the expenses of advertisements and sale, and the original purchaser, or his assigns, shall be entitled to receive from the said commissioners, at their treasury, on demand, the balance of the money which may have been actually received by them, or under their order, on the said second sale; and all lots, so

sold, shall be freed and acquitted of all claim, legal and equitable, of the first purchaser, his heirs and assigns.

III. *And be it enacted*, That the commissioners aforesaid, or any two of them, may appoint a certain day for the allotment and assignment of one half of the quantity of each lot of ground in Carrollsburg and Hamburg, not before that time divided or assigned, pursuant to the said act concerning the territory of Columbia and the city of Washington, and on notice thereof in the Annapolis, some one of the Baltimore, the Eastern and Georgetown newspapers, for at least three weeks, the same commissioners may proceed to the allotment and assignment of ground within the said city, on the day appointed for that purpose, and therein proceed at convenient times till the whole be finished, as if the proprietor of any such lots actually resided out of this state; provided, that if the proprietor of any such lot shall object in person, or by writing delivered to the commissioners, against their so proceeding as to his lot, before they shall have made an assignment of ground for the same, then they shall forbear as to such lot, and may proceed according to the before-mentioned act.

IV. *And be it enacted*, That the said commissioners may make a seal of office for the clerk for recording deeds within the district of Columbia, which shall be kept by him; and that the like fees shall be paid for, and the like credit shall be given to, certificates under seal, as to the like acts under the seal of a county court, and the said clerk shall be entitled to demand and receive his fees when the services enjoined him by this act, and the act to which this is a further supplement, shall be performed. (Md. Act, 1793, ch. 58.)